



AILA's Take on Court Reform and Counsel Provisions in S. 744

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American businesses, communities, and families are all affected by the shortcomings of our outdated immigration laws. The Senate immigration bill, S. 744, which passed out of committee on May 21, presents the best opportunity in decades to effectuate a lasting solution. As reform moves forward, the American Immigration Lawyers Association (AILA) urges Congress to enact the best possible law that meets our nation's needs.

Reducing immigration court backlogs

Our immigration court system is overburdened and under-resourced. In April 2013, the backlog of cases pending before immigration courts reached 330,533 cases, with pending cases waiting an average of more than one and a half years. Without additional judges and resources, which S. 744 would provide, the courts will not have sufficient personnel to manage the current caseload.

Ensuring judicial review

Courts play a key role in our systems of checks and balances. S.744 affirms courts' constitutionally mandated role by providing limited, cost-effective judicial review of DHS decisions in the legalization program. Review will prevent manifest injustice in cases where a single agency employee misinterprets the law.

Providing real administrative review

Given the severe consequences of removal, there must be meaningful review to ensure that immigration judges' mistakes are fixed. Three-judge panels at the BIA help ensure comprehensive yet efficient review of removal orders. This review, which S. 744 guarantees, may provide the only opportunity to correct erroneous decisions; federal courts are barred from reviewing many decisions and, even where review is available, many immigrants cannot afford an attorney to bring an appeal in federal court.

Providing counsel to particularly vulnerable immigrants

Thousands of children and people with serious mental disabilities are forced to represent themselves in immigration court each year. Pro bono attorneys are simply unable to meet the demand for those who cannot afford counsel. By guaranteeing representation for these immigrants, S. 744 would increase court efficiency, reduce taxpayers' costs, and ensure that the most vulnerable immigrants facing removal are afforded a fair process and a meaningful opportunity to be heard.

Guaranteeing immigrants' access to their own records

Immigrants may be forced to go into their hearings without access to their own immigration records, even though information in the records may be essential to establishing lawful status in the U.S. or eligibility for relief from removal. By giving immigrants in removal proceedings automatic access to this information, S. 744 would help to protect due process.

Protecting immigrants stipulating to their removal

Every year, immigration agents unduly pressure thousands of immigrants, often detained and unrepresented, to agree to be deported before their first hearing. Agents have informed many immigrants with strong cases that they will never prevail and that the only way to leave detention quickly is to sign stipulated removal papers. It is a failure of due process when immigration judges do not hold in-person hearings to determine whether these "stipulated removals" are voluntary, knowing and intelligent. S. 744 would require such hearings.

Expanding the Legal Orientation Program (LOP)

The majority of detained immigrants must represent themselves in immigration court. LOPs often are detainees' only chance to obtain basic legal information and a better understanding of their legal options. By expanding cost-effective LOPs to all detained immigrants, S. 744 would increase court efficiency, reduce detention time, and save taxpayers money.